

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Cardiac Pacemakers, Inc.; and
Guidant Sales Corporation,

Civil No. 04-4048 (DWF/FLN)

Plaintiffs,

v.

ORDER

Aspen II Holding Company, Inc.,
d/b/a/ Aspen Healthcare Metrics, LLC,

Defendant,

and

Public Citizen,

Intervenor.

Craig S. Coleman, Esq., John H. Hinderaker, Esq., Gerard M. Nolting, Esq., and
Jonathan W. Dettmann, Esq., Faegre & Benson LLP, counsel for Plaintiffs.

Douglas R. Boettge, Esq., Byron E. Starns, Esq., and Lawrence J. Field, Esq., Leonard
Street and Deinard; and Norman K. Beck, Esq., Monika M. Blacha, Esq., Josh Goldberg,
Esq., Sheri Klintworth Rudberg, Esq., Timothy J. Rivelli, Esq., Dan K. Webb, Esq., and
Kevin Banasik, Esq., Winston & Strawn, counsel for Defendant.

Paul A. Levy, Esq., Public Citizen Litigation Group, and Mark R. Anfinson, Esq.,
Anfinson Law Office, counsel for Intervenor.

1. On October 24, 2006, the Court **GRANTED, IN PART, AND DENIED,**
IN PART, Public Citizen's Motion to Unseal Summary Judgment Briefs and
Supporting Papers (Doc. No. 420). In that Order, the Court reserved the right to rule on
certain documents that contained solely third-party material. The Court directed Guidant,

in conjunction with Aspen, to send a copy of the Court's October 24 Order to those affected third parties within two weeks of the date of that Order, or by November 7, 2006. The Court granted the third parties thirty days from the receipt of the October 24 Order, or by December 5, 2006, to object to the Court unsealing documents that contained their own third-party material.

2. By December 5, 2006, two third parties had contacted the Court regarding the unsealing of certain third-party documents. First, Novation objects to the unsealing of Exhibit 42 to the Affidavit of Gerard Nolting (Doc. No. 183). Novation correctly notes that Exhibit 42 is the same document marked as Exhibit 77 to the Affidavit of Douglas Boettge (Doc. No. 167) and that the Court has already ruled that Exhibit 77 should remain sealed. Thus, the Court declines to unseal Exhibit 42 for the same reasons the Court has declined to unseal Exhibit 77. Conversely, the Court will unseal Exhibit 75 to the Affidavit of Douglas Boettge (Doc. No. 167) and Exhibits 9, 10, 41, and 43 to the Affidavit of Gerard Nolting (Doc. No. 183) because Novation does not object to the Court unsealing those documents.

3. Second, Premier objects to the unsealing of Exhibits 84, 86, 87, and 88 to the Affidavit of Douglas Boettge (Doc. No. 167)¹ and Exhibits 38 and 39 to the Affidavit

¹ Premier also objects to the unsealing of Exhibit 89 to the Affidavit of Douglas Boettge (Doc. No. 167). The Court, however, denies this request because the Court already ruled in the October 24 Order that Exhibit 89 be unsealed.

of Gerard Nolting (Doc. No. 183).² Premier asserts that these documents contain confidential and proprietary business information of Premier and one of its customers. The Court has carefully reviewed each of these documents and agrees that they should remain sealed because they contain confidential and proprietary business information. Conversely, the Court will unseal Exhibits 83 and 85 to the Affidavit of Douglas Boettge (Doc. No. 167); Exhibits 9, 10, 35, 36, 37, and 40 to the Affidavit of Gerard Nolting (Doc. No. 183); and Exhibit 55 to the Affidavit of Douglas Boettge (Doc. No. 189) and to the Corrected Affidavit of Douglas Boettge (Doc. No. 205), because Premier does not object to the Court unsealing these documents.

4. With the exception of the documents mentioned above, the Court orders that all other third-party documents be immediately unsealed consistent with the chart below because the remaining third parties did not object to unsealing these documents.

5. The Court directs Guidant, in conjunction with Aspen, to send a copy of this Order to the third parties within two weeks of the date of this Order.

Dated: December 12, 2006

s/Donovan W. Frank
DONOVAN W. FRANK
Judge of United States District Court

² Premier also objects to the unsealing of Exhibit 34 to the Affidavit of Gerard Nolting (Doc. No. 183) but also notes that the Court has already ruled that this document remain sealed.

Chart of Third-Party Documents**Docket No. 159: Affidavit of Craig S. Coleman (filed 11/01/2005)**

Exhibit Number	Description	Ruling
21	Deposition testimony of John Armstrong (Scripps Hospital), Joel Lankford (St. Patrick Hospital), Mark McDermott (Christiana Care), Gerry Slingsby (St. Patrick Hospital)	Unseal

Docket No. 167: Affidavit of Douglas R. Boettge (filed 11/01/2005)

Exhibit Number	Description	Ruling
17	Deposition testimony of John Armstrong (Scripps)	Unseal
18	Deposition testimony of Michael Zdeblick	Unseal
19	Deposition testimony of Jeff Olson (Silver Cross)	Unseal
20	Deposition testimony of Mark McDermott (Christiana Care)	Unseal
21	Deposition testimony of James McManus (St. Joseph)	Unseal
22	Deposition testimony of Louise White (Eisenhower Medical)	Unseal
23	Deposition testimony of Michele Tarantino (Christiana)	Unseal
25	Deposition testimony of Gerry Slingsby (St. Patrick)	Unseal
34	Deposition testimony of James McManus (St. Joseph)	Unseal
75	Deposition testimony of Dan Sweeney	Unseal
83	Deposition testimony of Paula Mowbray	Unseal
84	Internal Premier correspondence	Seal
85	Premier market research	Unseal
86	Premier market research	Seal
87	Premier market research	Seal
88	Premier market research	Seal
95	Deposition testimony of Michael Zdeblick	Unseal

Docket No. 183: Affidavit of Gerard Nolting (filed 11/28/2005)

Exhibit Number	Description	Ruling
9	Excerpts from the depositions of John Armstrong (Scripps Health), Kevin Brown (Centinela Hospital), Paula Mowbray (Premier), Dan Sweeney (Novation), and Michael Zdeblick (Rush System for Health), James McManus (St. Joseph Health System), and Michele Tarantino (Carilion)	Unseal
10	Deposition testimony of Paula Mowbray and Dan Sweeney	Unseal
19	Deposition testimony of Michael Zdeblick	Unseal
22	Deposition testimony of Joel Lankford (St. Patrick Hospital) and Gerry Slingsby (same).	Unseal
27	Deposition testimony of Tim Wohlgemut (MRG)	Unseal
30	Deposition testimony of Tim Wohlgemut (MRG)	Unseal
35	Excerpts from the deposition of Paula Mowbray	Unseal
36	Excerpts from the deposition of Paula Mowbray	Unseal
37	Excerpts from the deposition of Paula Mowbray	Unseal
38	Premier's CardiacFocus Cardiac Rhythm Management Final Report.	Seal
39	Premier's CardiacFocus survey	Seal
40	Deposition testimony of Paula Mowbray	Unseal
41	Deposition testimony of Dan Sweeney	Unseal
42	June 1, 2005 letter from Jean Holloway (General Counsel, Guidant Sales Corporation) to Loren Sobel (Senior Legal Counsel, Novation)	Seal
43	Deposition testimony of Dan Sweeney	Unseal
51	Deposition testimony of Mark McDermott (Christiana Care).	Unseal
52	Deposition testimony of John Armstrong and Michael Zdeblick	Unseal
54	Deposition testimony of Louise White (Eisenhower Medical), John Armstrong, Joel Lankford, Mark McDermott, Gerry Slingsby, and Michele Tarantino (Carilion)	Unseal
55	Deposition testimony of Mark McDermott	Unseal
72	Deposition testimony of Gerry Slingsby	Unseal
73	Email chain between Tom Lafferty and St. Patrick Hospital, with attached letter to St. Patrick from L. Foy of Guidant	Unseal

Docket No. 189: Affidavit of Douglas R. Boettge (filed 11/28/2005)

Docket No. 205: Corrected Affidavit of Douglas R. Boettge (filed 1/10/2005)

[These affidavits contained the same information]

Exhibit Number	Description	Ruling
7	Deposition testimony of Michael Zdeblick (Rush)	Unseal
8	Deposition testimony of Mark McDermott (Christiana Care)	Unseal
9	Deposition testimony of Michele Tarantino (Carilion)	Unseal
11	Deposition testimony of John Armstrong (Scripps)	Unseal
13	Deposition testimony of James McManus (St. Joseph)	Unseal
14	Deposition testimony of Louise White (Eisenhower Medical)	Unseal
27	Deposition testimony of Michael Zdeblick (Rush)	Unseal
28	Deposition testimony of James McManus (St. Joseph)	Unseal
55	Deposition testimony of Paula Mowbray (Premier)	Unseal
57	Deposition testimony of Michael Zagger	Unseal

Docket No. 193: Affidavit of Douglas Boettge (response affidavit filed 12/05/2005)

Exhibit Number	Description	Ruling
1	Deposition testimony of Joel Lankford (St. Patrick Hospital)	Unseal
3	Deposition testimony of Anthony Montagnolo	Unseal
7	Deposition testimony of Joel Lankford (St. Patrick Hospital)	Unseal
15	Deposition testimony of Mark McDermott	Unseal